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RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE
Preparatory Committee
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Item 6 of the provisional agenda

REVIEW OF REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

Contribution of the Committee on the Elimination of Racial Discrimination to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

Note by the Secretary-General

In its resolution 2000/14 of 17 April 2000, the Commission on Human Rights invited United Nations bodies and mechanisms dealing with the question of racism, racial discrimination, xenophobia and related intolerance to participate actively in the preparatory process for the World Conference (para. 66). The General Assembly, at its fifty-fourth session, also requested human rights mechanisms to assist the Preparatory Committee and to undertake reviews and submit recommendations concerning the World Conference and the preparations therefor to the Preparatory Committee, through the Secretary-General, and to participate actively in the Conference (resolution 54/154, para. 37). Accordingly, a contribution received from the Committee on the Elimination of Racial Discrimination is contained in the present document.

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Annex

CONTRIBUTION OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION TO THE WORLD CONFERENCE ON RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

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Introduction

1. Despite the Second World Conference to Combat Racism and Racial Discrimination (Geneva, 1-12 August 1983), racism and racial discrimination have continued their ravages around the world, sometimes reaching levels prejudicial to the maintenance of international peace and security. While the ending of apartheid in the period since then is to be welcomed, the rising intolerance, xenophobia, racism and racial discrimination in a number of countries are still causes for concern, since they threaten social cohesion, endanger public order within States and, in more general terms, affect friendly and peaceful relations among peoples.

2. In a number of countries certain populations have - often for a long time - been denied their economic, social, cultural and other human rights, a situation which can develop into widespread violence and armed conflict. In other countries, intolerance and exploitation of ethnic conflicts for political reasons occur. Furthermore, technological progress, the globalization of economies and political upheavals combine to aggravate existing inequalities and to generate new ones, as well as to increase migration movements across national boundaries. Societies which claimed to be homogeneous are becoming increasingly multi-ethnic.

3. In this scenario, issues of racism and racial discrimination are bound to become more complex and to receive greater public and media attention, demanding greater efforts on the part of Governments to deal with them. No State today can be said to be free from problems of racism or racial discrimination in one form or another. A serious feature of this situation is the extensive use of the Internet to disseminate racist propaganda and hatred.

4. In these circumstances, the international community has to be more vigilant and encourage States to use the instruments at their disposal to curb these evils. The World Conference should place special emphasis on this point, as well as on the need for all Governments to become more aware of and to understand fully the serious consequences of the many dimensions of racial intolerance and discrimination. For this reason, it is vital that Governments express in clear terms their political determination to support the efforts of the international community to combat discriminatory practices. Needless to say, resolute and effective cooperation among Governments is indispensable to the success of the international struggle against racial discrimination.

5. The responsibilities of the Committee on the Elimination of Racial Discrimination (CERD), set up under the International Convention on the Elimination of All Forms of Racial Discrimination, are wide-ranging and encompass monitoring the enjoyment, without discrimination on racial grounds, of civil, political, economic, social and cultural rights. The Committee pays particular attention to the enjoyment of these rights by vulnerable groups, such as women, children and migrant workers. The World Conference should be seen as a forum for encouraging State parties to the Convention to fulfil their reporting obligations in a timely and effective manner.

6. Many States parties have set up institutional mechanisms and developed "good practices" in order to address issues related to racism. These mechanisms range from those designed to address general human rights issues to those dealing specifically with racism. Information on practices and procedures which have been effective should be widely disseminated.

7. Poverty is a serious obstacle to efforts to combat racial discrimination. Poverty suppresses people's awareness, particularly among disadvantaged and marginalized communities, of the rights they have and of the mechanisms to guarantee their enjoyment. Low levels of education and economic resources contribute to these communities having a low level of empowerment.

8. In developing countries, and in fact in every country, the role of civil society, represented mainly by NGOs, in dealing with racism cannot be overemphasized. NGOs can articulate the claims of victims, undertake on the basis of their expertise a critical evaluation of existing programmes and policies and participate in remedial action. The World Conference should take account of the evolving role of civil society in addressing issues of racism and racial intolerance at the national, regional and international levels.

I. DEVELOPING PRIORITIES FOR THE FIVE THEMES OF THE CONFERENCE

A. Sources, causes, forms and contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance

9. Racial discrimination ought to be a matter of concern before it develops into civil unrest or armed conflict. Many conflicts which can assume genocidal proportions are not only the outcome of ancient enmities but arise when members of ruling elites use their positions to advance their personal interests.

10. The gap between rich and poor forces people to move in search of better living conditions, which in turn compels States to draw up restrictive immigration policies, tighter controls and broad exclusionary strategies. People who seek better living conditions should primarily be assisted in their country of origin rather than in foreign countries, if the problem of the gap between rich and poor is to be tackled at its root.

Recommendations

(a) States should grant to all populations within their territory equal enjoyment of social, economic, cultural and other human rights.

(b) States and other international actors should endeavour to ensure that globalization in its various aspects does not lead to inequalities and racial discrimination against particular groups.

(c) Industrialized States should develop a generous development assistance programme which will benefit a far larger number of needy people than at present is the case with assistance to asylum-seekers.

11. Regional cooperation, such as that under European Union auspices, often involves free movement and open borders for citizens, but monitoring and control of visitors and immigrants from outside the region. The control measures and the rhetoric behind them, such as frequent and negative references to illegal immigrants, easily generate a public feeling of distinction between the desirable "us" and the undesirable "them". Too often, policy makers and the media fail to distinguish between legal migrants and illegal aliens, or between refugees fleeing from persecution and asylum-seekers who have not been persecuted in their country of origin.

Recommendation: The World Conference should discuss how to avoid immigration policies which have the effect of engendering racist sentiments and discriminatory practices, as well as of endangering the rights of refugees under the 1951 Geneva Convention. The World Conference should also encourage cooperation between countries of origin and countries of reception to reduce illegal migration, criminal trafficking and commercial exploitation of human beings.

B. Victims of racism, racial discrimination, xenophobia and related intolerance

12. There is a need for States and the United Nations to establish and promote adequate mechanisms to enable victims of racial discrimination to share their experiences in order to learn from each other and to come up with appropriate remedies.

13. The conclusions reached should be disseminated, with a view to encouraging and legitimizing efforts to resist racial discrimination and the use of available instruments. Publicizing these conclusions, when possible, through the electronic and print media could be an effective strategy for enlarging the audience potentially interested in being informed about them.

Recommendation: A dialogue with NGOs and representatives of vulnerable groups would facilitate a better understanding of the causes and manifestations of racism and of the strategies to be followed to combat it.

C. Measures of prevention, education and protection aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance at the national, regional and international levels

14. Recommendations for the World Conference:

(a) CERD should be encouraged to refine the criteria for early warning and perhaps even develop a set of indicators and benchmarks that could constitute the basis of dialogue with State parties on that subject.

(b) Involving the private sector, especially the corporate and financial sectors, in prevention strategies is essential. The use of community and religious groups in conflict resolution might be an equally important mechanism for preventing and eradicating racism, racial discrimination and xenophobia.

(c) In the field of education, text books should be prepared in the spirit of the Convention, care being taken not to describe racial, ethnic and religious groups as possessing characteristics making them likely to be discriminated against. Governments should be called upon to articulate a vision of an inclusive national identity that encompasses all parts of the population on equal terms.

(d) The above consideration should also be taken into account in the preparation of codes of conduct for professionals in the mass media.

(e) The World Conference should recommend the establishment, with technical assistance from the Office of the High Commissioner for Human Rights, of operational units within regional organizations, such as the Organization of American States (OAS), the Organization of African Unity (OAU) and the Association of South-East Asian Nations (ASEAN), that would focus on combating racism in the region and which would be similar to the unit that exists within the Council of Europe, the European Commission against Racism and Intolerance (ECRI). The units could undertake research, training, publish studies, compile statistics, maintain databases and develop qualitative and quantitative indicators to measure regional progress in the struggle against racism. The units could also propose solutions whenever possible and in cooperation with CERD, regional organizations and States.

D. Provision of effective remedies, recourse, redress [compensatory] and other measures at the national, regional and international levels

15. Remedies, redress and compensation are central to the protection of the human rights of individuals and groups who are subjected to racism and racial discrimination.

Recommendations

(a) Programmes of action should be adopted as a long-term mechanism for resolving inequalities resulting from racism and racial discrimination. Special measures and programmes of action of this kind are, in appropriate circumstances, legitimate under the International Convention on the Elimination of All Forms of Racial Discrimination. In certain circumstances they are necessary.

(b) Compensatory measures providing legitimate and necessary remedy for past acts of racial discrimination should be adopted.

E. Strategies to achieve full and effective equality, including international cooperation and enhancement of the United Nations and other international mechanisms in combating racism, racial discrimination, xenophobia and related intolerance, and follow-up

16. Recommendations for the World Conference:

(a) The role of the International Convention on the Elimination of All Forms of Racial Discrimination as a central instrument in the elimination of racial discrimination should be strengthened through its universal ratification and strict implementation of all its provisions,

especially the mandatory provisions, such as those contained in article 4. The problem of reservations incompatible with the object and purpose of the Convention should be kept under constant review, with a view to clarifying all issues involved with such reservations, leading to their eventual withdrawal.

(b) The international community should reaffirm that the Convention is the framework for combating racial discrimination and that CERD is its trustee.

(c) Concrete steps should be taken to increase knowledge about CERD both within the United Nations system and among the broader public. As far as possible, CERD should hold a session in each region to generate support and expand regional understanding of the Convention and the methods of work of the Committee.

(d) A United Nations inter-agency task force on racism should be established, focusing on mainstreaming a programme of action against racism throughout the United Nations system (including all field operations), developing institutional policies and initiatives and promoting recommendations emanating from the World Conference. Close contacts and cooperation between CERD and the task force should be established.

II. EFFECTIVENESS OF THE INTERNATIONAL NORMS AND MECHANISMS OF PROTECTION

A. Universality of the International Convention on the Elimination of All Forms of Racial Discrimination

17. At present 156 countries are parties to the Convention.

Recommendation: The Conference should invite the States that have not yet done so to ratify the Convention without delay. While it is generally accepted that racism constitutes a severe violation of basic human rights, ratification of the Convention by all States would make this principle more effective.

B. Cooperation of States with international and regional mechanisms and bodies for the promotion and protection of human rights

18. Recommendation: The Conference should appeal to all States to cooperate fully with the international and regional mechanisms and bodies for the promotion and protection of human rights in order to achieve full implementation of standards aimed at eliminating racial discrimination.

C. Cooperation among United Nations treaty bodies

19. Recommendation: The Conference should encourage closer cooperation and personal contacts among the various United Nations treaty bodies through the exchange of information on situations that could result in violations of human rights in general and of the rights set forth in the Convention in particular.

D. Strengthening the individual complaints procedure set forth in article 14 of the Convention

20. Recommendations: The Conference should encourage States parties to:

(a) Make the declaration under article 14 of the Convention recognizing the competence of CERD to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Convention. It should be emphasized that the mechanism established under article 14 of the Convention and the individual complaints procedures which exist at the regional level, such as the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court of Human and Peoples' Rights, are not in competition but, rather, complement each other.

(b) Better inform the public about the existence of the mechanism established in article 14 of the Convention. States parties, and also non-governmental organizations, associations combating racial discrimination, lawyers and the judiciary, have an essential role to play in this area.

(c) Strengthen the secretariat of CERD with a view to improving its capacity to handle individual complaints under article 14.

E. Strengthening the compliance of States parties with their obligations under the Convention

21. Recommendations. The Conference should encourage States parties to take measures in order to:

(a) Provide CERD with the information required under article 9 of the Convention. In order for the Committee to fully evaluate this information the States parties should also provide information on the "socio-economic indicators" which can be used to identify the social groups most exposed to marginalization, exclusion, non-integration into society and, consequently, to the risks of racial discrimination.

(b) Combat discriminatory practices concerning access to employment, housing, health, goods and services, education, culture and other areas of everyday life. States parties should also pay special attention to manifestations of multiple discrimination and incorporate a gender perspective actions and policies designed to combat racial discrimination.

(c) Demonstrate that their legal systems provide effective remedies enabling victims of racism to secure both the punishment of perpetrators of acts of racism and just and adequate reparation for the damage caused, in accordance with the requirements of article 6 of the Convention. To do this, States should not merely show that adequate legislation exists. They should prove that this legislation is effectively applied and supply statistical information on complaints, prosecutions and sentences. The absence of complaints or prosecutions for racist acts is not necessarily a positive indicator: it could also show that victims are not well informed

of their rights, or that they do not have sufficient confidence in the police and judicial authorities, or that the authorities themselves are not sufficiently diligent or motivated in the prosecution of racist acts.

(d) Combat the impunity of perpetrators of acts of racism.

(e) Ensure that State officials who are in daily contact with the least privileged groups of society and from whom discriminatory behaviour might be feared, such as police officers, military personnel, prison staff, psychiatric staff and people involved in the administration of justice, including magistrates and lawyers, are trained in tolerance and inter-racial or inter-ethnic understanding.[1]

(f) Ensure the elimination of any behaviour of a racist nature and any discriminatory attitudes in the day-to-day operation of the police, the judiciary, prisons, hospitals, etc.

(g) Ensure that the media, including the Internet, promotes genuine ethical practices with regard to the phenomena of racism, xenophobia and related intolerance, in view of the fact that the media can play an important role in the prevention, as much as the propagation, of racism.

(h) Organize information campaigns on the dangers of racism and promote inter-racial or inter-ethnic tolerance, especially among young people, with the support of civil society, especially NGOs.

III. MEASURES ON BEHALF OF VULNERABLE GROUPS

22. Vulnerable groups are particularly exposed to racial or ethnic discrimination in many countries. In accordance with the Convention, State parties should pay special attention to the multi-faceted acts of discrimination which these groups may face.

Recommendations

23. With respect to indigenous populations, in particular, States parties should be invited, in conformity with CERD General Recommendation XXIII of 1997 to:

(a) Respect their identity, culture, history, language and traditions and their particular way of life;

(b) Provide them with an environment favourable to sustainable economic and social development;

(c) Ensure their effective participation in public life;

(d) Protect the right of indigenous populations to the acquisition and development of their lands and, should they have been deprived of their traditional lands, to take appropriate measures to return those lands to them; when restitution is impossible, to grant them adequate, equitable and rapid compensation.

24. With regard to Roma communities, States parties should be invited, in conformity with CERD General Recommendation XXVII of 16 August 2000 to:

(a) Take all necessary measures to protect the Roma communities against violence and to prosecute and punish the perpetrators of such acts;

(b) Adopt adequate measures favourable to the Roma communities in the fields of education, employment and health and for their full participation in public life;

(c) adopt, revise or amend their legislation and review their practices with a view to eliminating all forms of discrimination against immigrants and asylum-seekers of Roma origin.

25. With regard to refugees and displaced persons, it should be recalled that, in many parts of the world, international and internal conflicts have resulted in massive flows of refugees and the displacement of persons on the basis of ethnic criteria. In conformity with the 1951 Convention and the 1967 Protocol relating to the status of refugees, as well as with CERD General Recommendation No. XXII, States parties should be invited to:

(a) Ensure that the return of refugees and displaced persons to their place of origin is voluntary and carried out under conditions of safety, observing the principle of non-refoulement and non-expulsion of refugees;

(b) Guarantee all such refugees and displaced persons, after their return to their place of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them, as well as the right to participate fully and equally in public affairs at all levels and to receive rehabilitation assistance.

26. With regard to immigrants and migrant workers, their situation represents a challenge from the point of view of ensuring the protection of human rights, particularly non-discrimination, in the era of globalization. States parties should be invited to:

(a) Review their national legislation to eliminate all forms of racial discrimination, or discrimination based on ethnic origin, against immigrants and migrant workers;

(b) Give particular attention to the situation of immigrant women and workers employed in private households;

(c) Ensure the effective and full protection of immigrants and migrant workers by preventing arbitrary expulsions, by ensuring that repatriations are carried out in a dignified manner and by adopting specific measures to facilitate the reintegration of those who return to their countries of origin;

(d) Consider the possibility of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(e) Develop adequate training for public servants and the staff of immigration offices.

IV. PREVENTION OF RACIAL DISCRIMINATION, EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES

27. Since 1993, CERD has developed a mechanism directed towards preventing serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination. This mechanism comprises two types of measures:

(a) Early warning measures, designed to prevent existing problems from escalating into conflicts: the main criteria for implementing early warning measures are lack of an adequate legislative basis for defining and criminalizing all forms of racial discrimination, inadequate implementation and lack of recourse procedures, a pattern of escalating racial hatred and violence, racist propaganda and incitement to racial intolerance, and significant flows of refugees or displaced persons resulting from a pattern of racial discrimination.

(b) Urgent action procedures: these procedures are intended to address problems requiring immediate attention in order to prevent or limit the scale or number of serious acts of racial discrimination. The criteria for initiating an urgent procedure are: the presence of a serious, massive or persistent pattern of racial discrimination or a serious situation carrying a risk of further racial discrimination.

28. Over the past decades, countries in Asia, Africa and Europe have witnessed acts of genocide or "ethnic cleansing" perpetrated on a massive scale and with impunity. Such emergencies are dealt with in the United Nations system mainly by the Security Council. CERD, acting under its early warning and urgent action procedure has brought several such humanitarian crises to the attention of the Security Council through the Secretary-General. Experience has shown that the Security Council will be able to take effective and timely action to prevent or suppress such grave and systematic violations of human rights if it has at its disposal a force which, acting under an enforcement mandate, can be rapidly deployed.

29. States parties should also be encouraged to consider the use of article 11 of the Convention in cases of serious violations of the Convention that might degenerate into ethnic conflict. This measure would strengthen prevention and early warning.

V. "GOOD PRACTICES"

30. The experience gained by CERD from the consideration of progress reports has led to the compilation of the following catalogue of "good practices" which should be recommended to States parties for inclusion, mutatis mutandis, in their policy for implementing the Convention.

31. The unique historical, political, economic, social and cultural situation of each State party makes it challenging to identify "best practices". The circumstances of States differ so much that what might be a "good practice" in a particular region or country might not be suitable for implementation or would serve no purpose in another region or country. This has to be kept in mind in any assessment.

32. On the other hand, the influence of the universal and regional human rights treaties on national laws and the constructive dialogue between the Committee and State parties has led to the adoption of similar "good practices" by more than one country.

33. The examples given in the following paragraphs are only illustrative. They are not intended to imply a lack of such practices in States not selected for discussion. Nor does the absence of a specific "good practice" in a State mean that its practices are "bad". It has to be noted also that in most States parties legislative measures that can be considered "good practices" are not fully implemented.

A. Main themes

34. The following recurring categories of "good practices" emerge from a review of States parties' reports and the concluding observations of CERD thereon:

1. Constitutional guarantees against racial discrimination;

2. Legislation combating racist acts, organizations and speech;

3. Integration efforts;

4. Economic, social and cultural development initiatives;

5 Remedies, redress mechanisms and reparation for acts of racial discrimination;

6. Dissemination of the principles and provisions of the Convention;

7. Training of professionals;

8. National institutions, plans of action, policies and strategies to eliminate racial discrimination, including ethnic monitoring.

1. Constitutional guarantees

35. Almost all State parties have constitutional provisions that guarantee equality and prohibit discrimination. While some Constitutions only provide in general terms for equal protection, most Constitutions refer specifically to discrimination. Among the latter, some contain provisions that forbid discrimination in general terms:

> "No one shall be discriminated against in political, social or economic life for any reason whatsoever." (*Poland,* 1997, art. 32, para. 2)

36. Others highlight specific suspected areas of discrimination, in particular following recent constitutional reforms often influenced by the formulation contained in article 26 of the International Covenant on Civil and Political Rights.

37. While the catalogue of forbidden grounds of discrimination varies, race and sex are always included. Examples of very comprehensive catalogues can be found in recent Constitutions:

> "All individuals are born free and equal before the law, shall receive equal protection and treatment from the authorities and shall enjoy the same rights, freedoms and opportunities, without any discrimination on account of gender, race, national or family origin, language, religion, political opinion or philosophy." (*Colombia,* 1997, art. 13)

> "The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth." (*South Africa*, 1997, sect. 9 (3))

38. The fact that some Constitutions specifically address the protection of ethnic minorities or particular vulnerable groups is most welcome. Some do this by including them in the catalogues of forbidden grounds of discrimination. For instance, the Constitutions of *India* (art. 15) and *Nepal* (art. 11) include "caste" in this enumeration. Others contain specific provisions:

> "The indigenous peoples, which define themselves as nationalities with ancestral roots in the country, and the black or Afro-Ecuadorian peoples are an integral part of the single and indivisible Ecuadorian State." (*Ecuador*, 1998, art. 83)

> "In conformity with this Constitution and the law, and respect for the public order and human rights, the State shall recognize and guarantee the indigenous peoples the following collective rights" [there follows a list of 15 rights, starting with the right to maintain and strengthen their identity] (*Ecuador*, 1998, art. 84)

> "The State shall recognize and guarantee the black or Afro-Ecuadorian peoples all the rights established in the previous article that apply to them." (*Ecuador*, 1998, art. 85)

> "The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down in an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act. (*Finland,* 2000, sect. 17 (3))

> (a) The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State.

> (b) The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages.

(c) The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country.

(d) National and ethnic minorities shall have the right to form local and national bodies for self-government.

(e) A majority of two thirds of the votes of the Members of Parliament present is required to pass the law on the rights of national and ethnic minorities." (*Hungary*, 1997, art. 68)

The newly adopted Constitution of *Cameroon* guarantees, inter alia, the protection of the rights of minorities and indigenous peoples.

39. While it is very positive that almost all countries outlaw discrimination in their Constitutions, the efficacy of such provisions varies according to the different constitutional systems. In many countries, such provisions can not only be invoked against administrative discrimination, but constitutional courts and other courts can also use them to invalidate discriminatory laws. It is essential that recourse to these provisions should be inexpensive and that national institutions should be empowered to invoke them when individuals cannot.

40. As special measures in favour of vulnerable groups or special statutes for minorities are sometimes considered discriminatory by those who oppose them, some Constitutions specifically state that affirmative action measures are not unconstitutional:

"The State will promote the conditions so that equality may be real and effective and will adopt measures in favour of groups which are discriminated against or marginalized. The State will especially protect those individuals who on account of their economic, physical, or mental condition are in obviously vulnerable circumstances and will sanction the abuses or ill-treatment perpetrated against them." (*Colombia*, 1997, art. 13, para. 2)

"Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes." (*India*, art. 15, para. 4)

"Guarantees aimed at preventing unfair inequalities will not be considered discriminatory, but egalitarian factors." (*Paraguay*, 2000, art. 46, para. 2)

"The measures of protection adopted by the State to preserve, develop and express the identity of members of the national minorities must be in conformity with the principles of equality and non-discrimination vis-à-vis other Romanian citizens." (*Romania*, art. 6)

41. In general, constitutional guarantees against discrimination bind the State only, while it is a paramount aim of combating racism to protect against discrimination in all areas of life. Courts and constitutional law scholars in some countries have developed doctrines that extend

the protection against discrimination to the relationship between citizens, but this is rarely to be found in constitutional texts. However there are examples in Constitutions that address this problem:

> "No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -
>
> (a) access to shops, public restaurants, hotels and places of public entertainment; or
>
> (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained whole or partly out of State funds or dedicated to the use of the general public." (*India,* art. 15, para. 2)
>
> "No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law." (*Nepal,* art. 11, para. 4)
>
> "A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right." (*South Africa,* sect. 8)

2. Legislation combating racist acts, organizations and speech

42. Article 2 of the Convention states, inter alia:

> "(a) Each State party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
>
> (b) Each State party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
>
> (c) Each State party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."

43. While many States parties, at the time of ratifying the Convention, considered their legislation on libel and slander to be sufficient for the purpose of complying with that provision, the dialogue between States parties and the Committee has led most States parties to introduce into their legislation criminal law sanctions against racist acts, organizations and speech, often following closely the wording of article 4 of the Convention. Best practices in this field are those aimed at the faithful implementation of article 4.

> "Article 24, paragraph 5, of the 1881 Act, as amended by the Act of 1 July 1972, imposes correctional penalties on 'those who, by any of the means referred to in article 23, incite

to hatred or violence against a person or group of persons on account of their origin or membership or non-membership of a particular ethnic group, nation, race or religion'. The purpose of the incitement must be to encourage those at whom it is directed to adopt against the persons protected a form of discriminatory conduct prohibited by article 225-2 of the Penal Code, such as denying the rights which the person affected may claim, refusing to provide a good or service, dismissing or refusing to hire the person, etc. The incitement may also be intended to encourage among members of the public psychological or physical reactions hostile to the racial or religious groups concerned." (Fourteenth periodic report of France).[2]

"The replacement of article 3 of Law 654 of 1975 with article 1 of Decree-Law 122 of 26 April 1993 is one of the most significant innovations. It provides for a criminal penalty to be imposed on those who disseminate ideas based on superiority or racial and ethnic discrimination and who instigate others to commit or who themselves commit racist or discriminatory acts, violence or incitement to violence on racial, ethnic, national or religious grounds. Further criminal cases are also envisaged with reference to organizations, associations, movements or groups aiming to incite to discrimination or violence on racial, ethnic, national or religious grounds. Therefore, behaviour involving the dissemination of or the incitement to racist or discriminatory ideologies or the carrying out or instigation to any form of violence on racial, ethnic, national or religious grounds is considered to be a crime." (Eleventh periodic report of Italy)[3]

"There is already provision in United Kingdom legislation to address conduct which is intended to stir up hatred and conduct which involves the incitement of others to racial hatred. These provisions are contained in Part III of the Public Order Act 1986 and extend to the use of words or behaviour; the publication, distribution, display of written material; possession of written or recorded material with a view to publication, distribution, showing, playing, etc; the public performance of a play; the distribution, showing or playing of a video or audio recording; and the broadcasting of a programme in order to incite racial hatred." (Fifteenth periodic report of the United Kingdom)[4]

3. Integration efforts

44. At present, hardly any State is untouched or unaffected by the challenges emerging from a multi-ethnic and multi-cultural society. Since each State party finds itself in its own unique historical, political, economic, social and cultural situation, the problems encountered are also different. Some States parties have indigenous populations, others have to face prejudice and discrimination against certain ethnic minorities that have lived in their territories for centuries, such as the Roma, whereas others have seen in recent years the emergence of racial discrimination and xenophobic ideas and acts following the inflow of immigrants and refugees. Since the circumstances of States parties differ, the measures taken to promote integration are also different. Thus, some States parties have established national institutions and mechanisms to promote integration policies, whereas others have adopted development programmes for ethnic minorities or indigenous populations. Efforts have been made by many States to prevent conflict and facilitate coexistence so as to promote better integration in society. Potentially the most controversial measures are those for the dispersal of asylum-seekers and refugees.

4. Economic, social and cultural development initiatives

45. Discrimination in the exercise of economic, social and cultural rights arises not only as a result of traditions or long-standing prejudices or as a consequence of the introduction of policies or ideologies based on chauvinistic nationalism, but also of factors such as socio-economic underdevelopment, segregation of indigenous populations, and racial conflicts giving rise to violence. Much economic development is powered by the forces of competition and these often have the effect of increasing tension between groups. CERD has always commended States parties which are alert to the dangers that can spring from inequalities between groups with regard to employment, housing, health and social services and which have introduced preventive measures.

5. Remedies, redress and reparation for acts of racial discrimination

46. It has to be underlined that article 6 of the Convention covers every person under the jurisdiction of a State Party, nationals as well as non-nationals. Furthermore, this provision refers to the functions not only of tribunals but also other State institutions, and guarantees the right of protected persons to seek just and adequate reparation or satisfaction.[5]

6. Dissemination of the principles and provisions of the Convention

47. Under article 7 of the Convention, States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination.

48. The various methods of publicizing the Convention should also be used to publish the reports submitted by States parties to the Committee under article 9 of the Convention and the observations made by the Committee after considering the reports. Such activity should not be left only to Governments but should involve non-governmental organizations, educational establishments at all levels and cultural organizations. It should be addressed to members of Parliament, NGOs and the public at large.

49. Teaching institutions are appropriate places in which to encourage students to examine this subject in various ways, including debates on racism, xenophobia and intolerance in general.

50. In order to inform the general public about matters such as the Convention, States parties' obligations, national legislation, the role of the judiciary and other organs of the State, and issues concerning minorities, Governments, as well as NGOs and other sectors of civil society, could publish low-cost leaflets in large quantities and in a language easily understandable by all readers.

7. Training of professionals

51. Members of the judiciary, the police, prison and military personnel, other law enforcement officials, teachers and civil servants in general play an important role in combating racism, racial discrimination, xenophobia and related forms of intolerance. The practice of some States parties of organizing seminars and training programmes for the above-mentioned

professionals on human rights and the prevention of racial discrimination has proved to be very fruitful and effective. Regrettably, not all the States parties recognize the importance of such practice and some States parties do not pay enough attention to it.

8. National institutions, plans of action, policies and strategies to eliminate racial discrimination, including ethnic monitoring

52. The Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993 encouraged the establishment and strengthening of national institutions and recognized the right of each State to choose the framework best suited to its particular needs. It also recognized that such institutions should have certain characteristics which made them representative, competent and effective. They must be acceptable to the people at large, and more importantly to those whose problems it is sought to address. Equally, the Government must accept them; they must not be seen as a necessary evil set up to counter pressures from within the State or opinion outside. They must enjoy full autonomy and be able to express views and opinions truly and frankly. These institutions must be competent, in terms of the calibre and integrity of the personnel and in terms of the availability of resources, to discharge their responsibilities effectively. Serious consideration must be given to their reports in addressing human rights violations in general and racism in particular.

53. State reports show a great variety of action plans to combat racism. One State has drawn up a State Policy on Nationalities, which lays down basic principles and approaches with regard to relations between different nationalities, among which is the principle of equal rights for all ethnic groups. Another State has designed a National Anti-Discrimination Programme to support popular education programmes proposed by non-governmental organizations and provides for emergency action to deal immediately with discriminatory acts. In certain States the programmes of national human rights institutions include measures for the protection of minorities and ethnic groups. Elsewhere, Governments themselves have drawn up affirmative action plans to promote the interests of specific racial minorities or to address situations of acute racial violence and harassment in local communities.

B. Regional diversity

54. While CERD has always commended States parties for adopting and implementing "best practices" to help in the struggle against racial discrimination, it is necessary in this assessment to emphasize that the degree to which States parties have to contend with racial discrimination and the measures adopted in that regard differ. This diversity will be considered from a regional perspective.

Global best practices

55. Dissemination of the Convention is of fundamental importance, since it provides the population at large, and minorities in particular, with a useful means of combating racial discrimination, by demanding that its provisions be observed. It is necessary for the national authorities to examine the situation in their country in order to direct efforts to disseminate the Convention in the most effective way.

56. The first step is of course to translate the Convention into national majority and local languages, so as to provide a basis for campaigns that will reach the greatest number of people. One way to achieve optimum results is to publicize the Convention in all the media - press, radio and television - and through the Internet, although this reaches only a very limited audience as yet, particularly in developing countries.

57. The best medium is radio, which reaches large numbers of people, in both urban areas and, more importantly, rural areas. It also reaches illiterate people, of whom there are millions around the world, and groups lacking any written language, the only way to communicate with whom is orally.

58. The various remedies available to victims of racial discrimination in the enjoyment of the rights enunciated in the Convention include: recourse to national institutions,[6] which can play an important role in disseminating information about measures of protection and advising victims of the remedies available to them; recourse to law enforcement officials who are primarily responsible for combating discrimination and protecting the victims; prompt and effective action on the part of bodies responsible for the administration of justice; educational activities of the media which should promote understanding, tolerance and disseminate the basic principles of racial non-discrimination.

Best practices in Africa

59. *Burundi* and *Cameroon*, among other countries, have established national institutions for the promotion of human rights.[7]

60. *Mauritania* uses rural radio broadcasts to meet its obligations under article 7 of the Convention and to combat illiteracy.[8]

61. *Mauritius* prepared in 1991 a Master Plan on Education for the Year 2000 which provides for the teaching in schools of subjects in fostering understanding, tolerance and friendship among nations and racial or ethnic groups.[9]

62. *Morocco* has launched a project to introduce human rights education into primary and secondary school curricula. It has also established a human rights chair in one university and a human rights training, information and documentation centre. Additionally, regional councils for culture have been set up. Increased attention is being paid to Berber culture. In this respect, measures are being taken to include Berber dialects in school curricula.[10]

63. In *Rwanda*, efforts are being made by the authorities to improve the economic and social rights of the people, notably through the provision of housing facilities, as well as to prevent impunity for perpetrators of genocide and other human rights violations and to bring those most responsible for such acts to justice. The Rwandan authorities have established an independent National Human Rights Commission with a mandate to monitor and promote respect for human rights and to monitor how the State institutions with responsibility for the implementation and protection of human rights are managed.[11]

64. In *Zimbabwe*, the 1997 amendment to the Ombudsman Act broadened the mandate of the Office of the Ombudsman to include investigation of any violation of human rights committed by members of the defence and police forces and the prison services.[12]

Best practices in the Americas

65. In *Argentina*, the National Institute to Combat Discrimination, Xenophobia and Racism has adopted important measures relating to bilingual and cross-cultural education, the integration of indigenous scholarship students in the traditional school system and financial assistance for projects to raise the standard of living of certain communities. Particular reference is made to the projects being implemented for the Wichi ethnic group in the Chaco region, and to the organization of seminars and training programmes on human rights and the prevention of racial discrimination for judges and prison officials.[13]

66. The efforts of *Chile* to promote the integration of the indigenous population include: the setting up of an Indigenous Development Corporation; measures taken to ensure the right to land of the indigenous population through the purchase and transfer of land to indigenous communities; and the establishment of a special judicial system for the indigenous population which recognizes custom as a mode of proof and allows for legal conciliation of, in particular, land disputes.[14]

67. The Constitutional Court of *Colombia* decided in the Cimarrón case that positive differentiation would correspond to recognition of the social marginalization to which the black population has been subjected and which has adversely affected its access to opportunities for economic, social and cultural development.[15]

68. A number of countries have set up national institutions to promote the enjoyment of human rights in general and those of ethnic groups in particular. Thus, a National Human Rights Commission for Indigenous Peoples has been established in *Colombia*,[16] while in *Mexico* the National Human Rights Commission has set up an indigenous affairs programme.[17]

69. In *Costa Rica*, the implementation of a "migratory amnesty" from 1 February to 31 July 1999 allowed for regularization of the situation of a large number of clandestine immigrants and facilitated their greater enjoyment of social, economic and cultural rights, particularly with respect to work.

70. In *Guatemala* a Commission on Historic Clarification (truth commission) has been established to investigate killings and disappearances during the armed conflict. A large number of Guatemalans, mainly indigenous, who had fled their lands and the country during the time of the armed conflict have returned. A fund has been established to assist the returnees in their resettlement. Additionally, a Secretariat of Indigenous Peoples and a Commission on Homeless Children have been set up in the Office of the Public Prosecutor.

71. *Mexico* has undertaken a number of measures to combat extreme poverty and promote the economic, social and cultural development of the indigenous populations.[18]

72. In *Panama*, the National Commission on Administrative Boundaries has undertaken important negotiations and law reform, such as the enactment of laws establishing the indigenous *comarcas* (territorial districts of the indigenous peoples) of Madugandi and Ngobe Bugle.[19]

73. *Peru* has reached an agreement with the International Labour Organization which involves the setting up of a special programme for the protection of indigenous communities under which complaints concerning violations of the rights of indigenous peoples and native communities can be investigated and prosecuted.[20]

Best practices in Asia

74. *Cyprus* has introduced language programmes for children of immigrant families and minority groups, as well as official subsidies for children belonging to minority communities. In addition, human rights education has been included in the school curricula. Training programmes on the provisions of the Convention have been introduced for civil servants.[21]

75. National institutions are being set up in *India*,[22] *Jordan* and *Nepal* to promote the enjoyment of their rights by different ethnic groups.

76. Measures taken to eliminate discrimination in areas inhabited by disadvantaged ethnic and tribal minorities and groups in *Iran* include: the introduction of increased quotas for students from under-developed provinces in public universities; the allocation of resources to promote research on the root causes of the problems of economically, socially and culturally disadvantaged areas, such as the low number of girls enrolled in schools or completing their education; a successful literacy campaign which has resulted in a significant rise in literacy among, in particular, women from disadvantaged areas; and the promotion of non-discrimination in access to health care.[23]

77. In the *Philippines*, various measures have been adopted to prevent and combat disparities between ethnic groups, including the adoption of the Social Reform Agenda under the Medium-Term Development Plan, aimed at fighting poverty and attaining social justice; the promulgation of the Rules and Regulations on Children of Indigenous Cultural Communities, seeking to provide those children with basic health, nutrition and other social services; the adoption by the Department of Labour and Employment of measures to prevent discrimination against workers from minority groups; and the granting of scholarships to children and young people from the indigenous cultural communities, through the National Integration Study Programme and the Special Ethnic Groups Educational Assistance Programme. National human rights institutions are drawing up and implementing sectoral action plans.[24]

78. The *Republic of Korea* has set up complaint centres in all immigration control centres, to facilitate the filing of complaints by migrant workers in cases where their rights have been violated. There are a number of other possibilities for seeking remedies with the governmental and legal authorities and for suing individuals, the State or its representatives for compensation in cases of violation of fundamental human rights.[25]

Best practices in Europe

79. In *Austria*, a National Fund for Victims of National Socialism, established in 1995, offers a compensation scheme for victims of genocide.[26]

80. *Denmark* has undertaken several positive legislative and other measures to combat ethnic discrimination on the labour market, including the Act on Prohibition against Differential Treatment on the Labour Market, which came into effect on 1 July 1996, and the "Icebreaker arrangement" which aims at providing financial assistance, under certain conditions, to enterprises with up to 250 employees which hire highly educated immigrants or refugees. Programmes initiated in the field of placement services and vocational training courses for immigrants and refugees also help to improve their entry into the labour market. Denmark has introduced improvements in the human rights training of the police designed to combat negative attitudes towards minorities and to promote good relationships with ethnic minorities.[27]

81. In *Finland*, efforts have been made to encourage significant representation of immigrant groups and traditional national minorities on the new Advisory Board for Ethnic Relations, as well as to ensure their participation in the Commission against Racism, Xenophobia, Anti-Semitism and Intolerance. Legislation has been enacted to ensure that immigrant children fully enjoy their right to education, including, where possible, in their own language. To this end, efforts have been made to facilitate the education of the Sami and Roma people in their own languages.[28]

82. In *France*, the Ministry of Employment and Solidarity has been working on mediation to bring immigrant populations closer to institutions, prevent conflict and facilitate coexistence. One such mediation initiative is the "helping hands" system. Women who were themselves immigrants and are now well settled, assist and support newly arrived women in the necessary immigration procedures. The Committee has noted as a positive measure taken by France the publication and wide dissemination of a "Guide to anti-racist legislation", which is divided into the following parts: the development of national and international law; a general description of French legislation; a definition of prohibited acts and behaviour and a summary of violations, penalties and criminal sentences; victims' rights and available courses of action, including action through associations. France has also established a toll-free line where individuals can immediately report acts of racial discrimination of which they have been victims.[29]

83. *Germany* has improved its curricula at various levels of the educational system to encompass instruction, starting in the early years of schooling, about other cultures and religions, with a view to instilling in the young a feeling of respect for all human beings, regardless of ethnic origin or religious affiliation. Some victims of discrimination have been successful in vindicating their rights in the German courts, including in the context of employment.[30]

84. In *Hungary*, a large and conscientiously prepared consultation, conducted for the purpose of reaching political consensus on the question of minorities, led to the adoption on 7 July 1993 of the Act on the Rights of National and Ethnic Minorities, which permits a reversal of the former process assimilating national and ethnic minorities, so that they may regain their linguistic and cultural identity.[31]

85. In *Italy*, schools have introduced programmes on inter-racial tolerance. Efforts have also been made in Italy to facilitate access to education for children of different cultural and linguistic backgrounds.[32]

86. In *Iceland*, the Human Rights Office has provided special lectures on human rights and tolerance for persons working with and teaching immigrants. The Icelandic School for Policemen also offers a compulsory course on human rights and international human rights instruments.

87. In *Latvia*, efforts have been made to promote the use of minority languages, particularly in adult learning programmes.[33] In 1991 the Parliament passed a law which restored Latvian citizenship to those who had it before the Second World War and to their direct descendants, regardless of ethnicity.[34]

88. *Luxembourg* has introduced special legislative measures to promote and protect the right of foreign workers to housing.

89. In the *Netherlands*, a Reporting Centre for Discrimination on the Internet has been established. The Centre tries to prevent the distribution of racist utterances and to reduce their number.[35]

90. In *Norway*, a Centre for Combating Ethnic Discrimination has been established. The Centre is an independent governmental body that will provide professional legal assistance to victims of discrimination on grounds of religion or belief, race, colour or national or ethnic origin. It will also monitor the type and extent of racial discrimination in Norway.[36] The Government of Norway introduced a Plan of Action for Recruiting Persons with an Immigrant Background to the State Sector for the period 1998-2001. The Plan contains measures to reduce structural barriers to employment and measures targeted at the attitudes and expertise of the employers. Several governmental services have drawn up their own plans of action, some including percentage targets for the recruitment of new employees with an immigrant background.[37]

91. In *Portugal*, efforts have been made to promote equal opportunities for the Roma and to facilitate their better integration in society. In this regard, a Working Group for the Equality and Insertion of Gypsies was established and "Gypsy mediators" were appointed with the task of ensuring links between the Roma community and the public and private sectors.[38]

92. *Romania* has introduced human rights education programmes for law enforcement officers and the general public.[39]

93. In *Spain*, the implementation of the "Gypsy development programme" in 1998 brought about, inter alia, favourable effects in the field of housing. The activities undertaken under the programme are also intended to enhance inter-institutional cooperation, provide financial and technical assistance to NGOs working with disadvantaged Gypsies, improve the image and dissemination of Gypsy culture and combat discrimination against members of that community. The activities undertaken include the establishment of mobile educational support units, which provide education to circus families, as well as programmes for the maintenance of the language

and culture of minority and immigrant groups. A Sub-Commission for the Study of the Problems of the Gypsy Community has been set up and a document issued outlining the most serious problems facing Gypsies in the country.

94. *Sweden* has established a number of institutions and mechanisms to promote and implement integration policies and to combat racism and xenophobia, including the Ombudsman against Ethnic Discrimination, the Swedish Integration Board, the Parliamentary Commission entrusted with the task of reviewing Swedish immigration and refugee policies, and the Parliamentary Commission reviewing policies with respect to the long-term integration of immigrants and refugees.[40]

95. In the *United Kingdom*, the Housing Act, adopted in 1996, contains provisions aimed at combating racial discrimination in the field of housing. Seminars and training programmes have been organized for judges, magistrates and law enforcement officials, provided in particular by the Ethnic Minorities Advisory Committee and the Police Training Centres, which are aimed at the elimination of racial discrimination in the relationships between members of these professions and members of ethnic minorities. Ethnic monitoring has been used to ascertain the numbers of persons of a particular ethnic and national origin in various kinds of employment. Targets have been set to increase the employment of persons of minority origins in fields where they are under-represented. Ethnic monitoring has also been used in the criminal justice system, including among the prison population, in order to identify points at which discrimination occurs and to develop means of rectifying it.[41]

Notes

[1] See CERD General Recommendation XIII of 1993.

[2] CERD/C/337/Add.5, para. 124.

[3] CERD/C/317/Add.1, para. 12.

[4] CERD/C/338/Add.12, para. 50.

[5] See General Recommendation XXVI on article 6 of the Convention.

[6] General Recommendation XVII recommends that States parties should establish national commissions or other appropriate bodies to promote, among other things, "respect for the enjoyment of human rights without any discrimination, as expressly set out in article 5 of the Convention".

[7] See CERD/C/295/Add.1 of 4 April 1997 and CERD/C/298/Add.3 of 15 October 1997.

[8] See CERD/C/330/Add.1 of 26 October 1998.

[9] See CERD/C/280/Add.2 of 3 January 1996.

[10] See CERD/C/298/Add.4 of 12 December 1997.

[11] See CERD/C/335/Add.1 of 28 June 1999.

[12] See CERD/C/329/Add.1 of 18 November 1998.

[13] See CERD/C/338/Add.9 of 11 November 1999.

[14] See CERD/C/337/Add.2 of 29 October 1998.

[15] See CERD/C/332/Add.1 of 17 November 1998.

[16] See CERD/C/332/Add.1 of 17 November 1998.

[17] See CERD/C/296/Add.1 of 30 September 1996.

[18] See CERD/C/296/Add.1 of 30 September 1996.

[19] See CERD/C/299/Add.1 of 19 March 1996.

[20] See CERD/C/298/Add.5 of 20 July 1998.

[21] See CERD/C/299/Add.19 of 15 October 1997.

[22] See CERD/C/299/Add.3 of 29 April 1996.

[23] See CERD/C/338/Add.8 of 28 October 1998.

[24] See CERD/C/299/Add.12 of 13 March 1997.

[25] See CERD/C/333/Add.1 of 1 April 1998.

[26] See CERD/C/319/Add.5 of 20 July 1998.

[27] See CERD/C/362/Add.1 of 12 July 1999.

[28] See CERD/C/363/Add.2 of 16 May 2000.

[29] See CERD/C/337/Add.5 of 5 July 1999.

[30] See CERD/C/338/Add.14 of 6 July 2000.

[31] See CERD/C/263/Add.6 of 3 May 1995.

[32] See CERD/C/317/Add.1 of 20 July 1998.

[33] See CERD/C/309/Add.1 of 25 March 1999.

[34] See CERD/C/309/Add.1 of 25 March 1999.

[35] See CERD/C/362/Add.4 of 6 July 1999.

[36] See CERD/C/363/Add.3 of 6 December 1999.

[37] See CERD/C/363/Add.3 of 6 December 1999.

[38] See CERD/C/314/Add.1 of 17 November 1998.

[39] See CERD/C/363/Add.1 of 17 May 1999.

[40] See CERD/C/280/Add.4 of 20 November 1996.

[41] See CERD/C/299/Add.9 of 2 December 1996.